

SUR-RESPONSE TO REPLY IN SUPPORT APPLICATION UNDER 28 U.S.C. § 1782

Argument

After the Application and supporting memorandum failed to connect the discovery sought to the pending election proceedings, the Reply attaches the Applicant's "Reply to the 2nd Respondent's Reply to the Petition" and references page six and paragraph (i) of that document. (Dkt. 22, Reply, pg. 4; Dkt. 24-5, Exhibit E, pg. 8 of 48.) According to the Reply, that supplemental Nigerian court filing establishes the connection between the requested discovery and the Applicant's electoral challenge. (Dkt. 22, pg. 3.) The quoted and referenced portion of the Nigerian court filing parrots

conspiracy theories about President Tinubu, including that the degree from Chicago State University really belongs to a female named Bola Tinubu. (Dkt. 24-5, Exhibit E, pg. 8 of 48.) The Reply avoids suggesting that discovery should proceed on the conspiracy theories about gender and birth. Instead, the Reply asserts that there are issues with the authenticity of the diplomas. (Dkt. 22, pg. 5-6.) But, the “authenticity” of the diplomas is not at issue in the election proceedings. More importantly, the fact that President Tinubu was awarded a degree in June 1979, as stated in the diplomas, was verified by the Chicago State University Registrar. Applicant’s unwillingness to accept the facts is not a basis for discovery.

1. The Application Does Not Seek Material For Use in the Foreign Proceeding

Contrary to the Reply’s assertions, discovery under § 1782 is not an unlimited fishing expedition. *See Ijk Palm LLC v. Anholt Servs. USA, Inc.*, 33 F.4th 669, 679 (2d Cir. 2022); *Kestrel Coal PTY. LTD. v. Joy Global, Inc.*, 362 F.3d 401, 406 (7th Cir. 2004). The discovery sought needs to be connected to the foreign proceeding that Applicant is bringing in the election court – where he purportedly seeks to submit the material gathered. *Id.* Here, that connection is absent.¹

The new (revised) subpoenas the Applicant seeks to issue do not seek information that is actually for use in the electoral challenge. The election challenge

¹ The Reply concedes that evidence has to be relevant to the issues raised in the pleadings in Nigeria, just as in the United States.

petition describes ballot counting and miscounting as the basis for overturning the election.² (*See* Dkt. 5-2, Exhibit B.) The subsequent Nigerian court filing appended to the Reply asserts that the degree from Chicago State University belongs to a female named Bola Tinubu. (Dkt. 24-5, Exhibit E, pg. 8 of 48.) That conspiracy theory is not an asserted basis for discovery. Therefore, the purported “authenticity” of the diploma(s) is not at issue in the election proceedings.

2. There Is No Basis for Discovery.

Like other recent election challenges in the United States, the Applicant’s request for discovery is based on a disagreement with the facts. (*See* Dkt. 2, pg. 6, asserting the Westberg affidavit “simply raises further questions.”) The Chicago State University Registrar, under oath, confirmed that President Bola A. Tinubu attended and graduated from Chicago State University with a Bachelor of Science degree in Business Administration. (Dkt. 21-1, Response, Exhibit 3, CSU Registrar Affidavit ¶¶ 2, 7.) The CSU Registrar stated the same thing in a June 2022 Letter that the Applicant appended to the Reply. (Dkt. 23-3, Exhibit R.) Because the Applicant refuses to accept the Registrar’s verification, the Reply asserts that deposition and document subpoenas are necessary. (Dkt. 22-2.) Disbelief of the fact that President Tinubu graduated from Chicago State University is not a basis for discovery.

² The Reply does not appear to dispute that the 200+ page election challenge “Petition” (Dkt. 5-2, Exhibit B) does not contain any reference to President Tinubu’s CSU degree.

The Reply also misunderstands the nature of a diploma. As the Registrar explained, diplomas are ceremonial. (Dkt. 21-1, Response, Exhibit 3, CSU Registrar Affidavit ¶ 6.) A diploma is a tangible representation of the intangible – completion of an education. A diploma recites what university records reflect – the fact that a student completed a course of study in a particular year. Here, regardless of Applicant’s questions about changes in the signatures, the seal, or the font, the diplomas are accurate in stating that President Tinubu graduated from Chicago State University with a Bachelor of Science degree in Business Administration in June 1979.³

Applicant’s new document subpoena misguidedly seeks copies of previously issued diplomas (and all other CSU diplomas like the diplomas issued), as well as all documents “relating to” the documents CSU’s prior internal attorney certified. (Dkt. 22-1.) Even if it could be located, none of that information will alter the fact that President Tinubu is a graduate of CSU. (Dkt. 21-1, Response, Exhibit 3, CSU Registrar Affidavit ¶¶ 2, 7; Dkt. 5-4, Exhibit D.) Likewise, the Applicant’s disbelief about documents the prior CSU attorney certified is not a basis for more discovery either. The Applicant has been supplied with evidence demonstrating the fact that President Tinubu graduated from Chicago State University. Applicant’s unwillingness to accept fact is not a basis to invoke § 1782.

³ As American political figures learned during the last election cycle, there are differences between newsrooms and courtrooms. New articles, even from the New York Times, are not evidence, nor do they supply a basis for discovery. (See Dkt. 23-1.)

There is no indication that Nigerian courts have any more tolerance for unsupported conspiracy theories than U.S. courts have shown. In fact, the Nigerian election court rejected Applicant's challenge. (See **Exhibit 9**, 9/6/23 Judgment of the Presidential Election Petition Court.) The lack of receptivity of the Nigerian courts to conspiracy theories is confirmation that the § 1782 request should be denied. See *Venequip, S.A. v. Caterpillar, Inc.*, No. 21 CV 6297, 2022 U.S. Dist. LEXIS 48443, *5 (N.D. Ill. March 18, 2022).

Conclusion

The new subpoenas proposed in the Reply constitute a fishing expedition based on conspiracy theories and disagreement with the affidavit provided by Chicago State University's Registrar. There is no basis for further discovery and the Application should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on **September 11, 2023**, the foregoing **Sur-Response to Reply In Support of Application for Issuance of Discovery Under 28 USC § 1782** was electronically filed with the Clerk of the United States District Court for the Northern District of Illinois by filing through the CM/ECF system, which served a copy of the foregoing upon all counsel of record.

By: /s/ Chirstopher Carmichael